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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: DEC 18 2007

EAC 06 045 51928

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. Although the petitioner did not complete Part 6 of the Form I-140 petition, it appears that the petitioner seeks employment as an intellectual property lawyer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director did not contest that the petitioner qualifies for the classification sought, but concluded that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submitted a brief. Subsequently, the petitioner submitted evidence that she has passed the New York State Bar Examination and is now a member of the New York State Bar in good standing. We note that the petitioner must establish eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Regardless, for the reasons discussed below, we concur with the director's finding that the petitioner has not established that a waiver of the alien employment certification is warranted in the national interest. Ultimately, the record lacks evidence supporting any of the petitioner's many assertions about her past work experience or the required translations for the title pages of the foreign language publications submitted pursuant to 8 C.F.R. § 103.2(b)(3).

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner seeks classification as an alien of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. These criteria follow below.

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered." Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below; qualifications possessed by every member of a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." The petitioner claims to meet the following criteria.

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability*

Section 203(b)(2)(C) of the Act provides that the possession of a degree, diploma, certificate or similar award from a college, university school or other institution of learning shall not by itself be considered sufficient evidence of exceptional ability. Thus, we must determine whether the petitioner's degree is indicative of or consistent with a degree of expertise significantly above that ordinarily encountered.

In 1991, the petitioner received a degree in Economic Law from the China University of Political Science and Law after one and a half years of coursework. In 1995, she received a Master's Degree of Law from the same institution. The petitioner did not submit a credentials evaluation of this education. The petitioner submitted a letter from [redacted] Assistant Dean for Records and Registration at the Franklin Pierce Law Center affirming that the petitioner had "completed all requirements for a Master of Laws in Intellectual Property, Commerce & Technology on May 15, 2004." The petitioner did not submit the official academic record for this final degree as required under 8 C.F.R. § 204.5(k)(3)(ii)(A).

Notably, the record contains an October 18, 2005 letter from [redacted] the Executive Director of the New York State Board of Law Examiners finding that the petitioner did not meet the requirements to take the New York State Bar exam set forth in Section 520.6 of the Rules of the Court of Appeals. Specifically, Mr. [redacted] concluded that the petitioner's education in China was of an insufficient duration and that it was not "the substantive equivalent of the legal education provided by an approved law school in the United States." The petitioner's 20-credit program at the Franklin Pierce Law Center was deemed insufficient to resolve both the durational and substantive problems.

The petitioner then requested a waiver of the requirements of section 520.6(b) of the Rules of the Court of Appeals, explaining her education both in the U.S. and in China and her experience in China. On March 28, 2006, the Court of Appeals granted the waiver and permitted the petitioner to

sit for the New York Bar Examination in July 2006 providing she presented proof of her degree from the Franklin Pierce Law Center.

While the petitioner was ultimately granted a waiver of the education requirements for the New York State Bar Examination, it remains that her education was not deemed equivalent to a U.S. law degree in either duration or substance. Thus, we cannot conclude that her education is indicative of a degree of expertise above that ordinarily encountered in the field of law in the United States.

In light of the above, the petitioner has not established that she meets this criterion.

*Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought*

The petitioner did not submit letters *from her current or former employers* documenting her employment for the Chinese State Administration for Industry and Commerce or the law firms for which she claims to have worked as a legal assistant in the United States. 8 C.F.R. § 204.5(k)(3)(ii)(B); 8 C.F.R. § 204.5(g)(1). The petitioner's self-serving statements and curriculum vitae are insufficient. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Regl. Commr. 1972)).

The petitioner did submit a Household Book confirming that she worked as an "official" for the Chinese State Administration for Industry and Commerce. This document, however, does not confirm at least 10 years of employment in this position.

Finally, even if we accepted the petitioner's claim on her curriculum vitae to have worked as a trademark examiner for the Chinese State Administration for Industry and Commerce and a legal assistant for two U.S. law firms, the petitioner seeks to work in the United States as a lawyer. The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B) requires at least 10 years of experience *in the occupation* of proposed employment. The record is absent evidence that the petitioner has ever practiced law.

In light of the above, the petitioner has not established that she meets this criterion.

*A license to practice the profession or certification for a particular profession or occupation*

Section 203(b)(2)(C) of the Act provides that the possession of a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of exceptional ability. Thus, we must determine whether the petitioner's license is indicative of or consistent with a degree of expertise significantly above that ordinarily encountered.

Membership in a state bar is required for the practice of law. Thus, possession of bar membership is not evidence of a degree of expertise significantly above that ordinarily encountered in the field of law. Regardless, the petitioner was not a member of the bar as of the date of filing, the date on

which she must establish her eligibility. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. at 49.

In light of the above, the petitioner has not established that she meets this criterion.

*Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability*

The record is absent evidence relating to this criterion.

*Evidence of membership in professional associations*

The petitioner claims to meet this criterion through her alleged employment for the Trademark Review and Adjudication Board (TRAB), an appellate entity that reviewed decisions made by the Chinese Trademark Office. First, the record lacks evidence of the petitioner's employment for TRAB or her duties for the Chinese State Administration for Industry and Commerce. As stated above, the petitioner's self-serving statements are insufficient. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California,* 14 I&N Dec. at 190). Regardless, employment is not a membership in a professional association.

In light of the above, the petitioner has not established that she meets this criterion.

*Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations*

The petitioner asserts that her recognition as a "competent official" at TRAB and her selection for an International Visitor visa in 2002 and 2003 serve to meet this criterion. The record contains no evidence of any formal recognition from TRAB. As stated above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California,* 14 I&N Dec. at 190). The record does contain letters from the U.S. Embassy in China inviting the petitioner to participate in the International Visitor program. According to the letter from [redacted] of the U.S. Embassy, the program "provides an opportunity to exchange ideas with professional counterparts on issues of common interest, as well as to observe the diversity of the United States and to meet Americans from various walks of life." While the internet materials provided reveal that heads of state, cabinet level ministers and other distinguished work leaders in government and the private sector have participated in the program, the information does not suggest that the program is limited to those who have demonstrated achievements or significant contributions to their field.

In light of the above, the petitioner has not demonstrated that she meets this criterion.

As the petitioner has not demonstrated that she meets any of the above criteria, she has not established that she qualifies as an alien of exceptional ability as defined at 8 C.F.R. § 204.5(k)(2). An alien may also qualify for a national interest waiver, however, as a member of the professions holding an advanced degree. Even if we considered the petitioner's alleged degree from the Franklin Pierce Law Center as evidence that the petitioner holds an advanced degree, she was not a member of the professions as of the date of filing. Specifically, we acknowledge that lawyers are members of a profession. That profession, however, requires bar membership. The petitioner was not a member of the bar as of the date of filing, the date as of which she must establish her eligibility. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. at 49.

As the petitioner has not demonstrated that she is an alien of exceptional ability or that she was a member of the professions holding an advanced degree as of the date of filing, the issue of whether waiving the job offer requirement is in the national interest is moot. Nevertheless, we will address this issue as it was the sole basis of the director's decision.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

On appeal, the petitioner references a non-precedent decision by this office. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. The AAO has issued a precedent decision relating to the benefit sought, which is binding in this matter. Specifically, *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 217-18 (Commr. 1998)(hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a

substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, intellectual property law. The director did not contest that the proposed benefits of her work would be national in scope. We are not persuaded, however, that the effect of one lawyer at a single law firm practicing intellectual property law for individual clients would have more than a negligible effect at the national level. For example, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. *Id.* at 217 n.3. The petitioner's assertion that she is publishing information on intellectual property law for use nationally in the United States (and thus in English) is unsupported in the record.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The petitioner initially referenced a letter from her law school professor and a letter from a former fellow employee at the [redacted] Professor [redacted] asserts that the petitioner is knowledgeable about Chinese trademark law and has authored "several articles" on the subject. He concludes that she will promote economic growth in the United States. He requests a waiver of the job offer requirement so that the petitioner can study for the bar examination. Mr. [redacted] provides similar information. We concur with the director that none of these grounds warrant a waiver of the alien employment certification in the national interest. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223.

On appeal, the petitioner purports to know of unskilled workers who have received the benefit sought and even classification as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A). The petitioner also references difficulties with her current employer. At issue in this proceeding is only the petitioner's eligibility for the benefit sought.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique

background." *Id.* at 221. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.*

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra element of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

In response to the director's request for additional evidence and again on appeal, the petitioner asserts at length that she has made significant contributions to intellectual property law in China. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California,* 14 I&N Dec. at 190). Thus, we cannot consider any claims that are not supported by primary evidence or, in appropriate cases, secondary evidence or affidavits. *See* 8 C.F.R. § 103.2(b)(2).

As stated above, the petitioner has not documented her employment duties and accomplishments in China with letters from her employer there. We reiterate that the appropriate evidence of experience consists of letters from current or former employers. 8 C.F.R. § 204.5(g)(1). None of the three references who support the petition appear to have any first-hand knowledge of the petitioner's employment in China.

In response to the director's request for additional evidence, the petitioner asserts that her decisions on individual trademark cases in China had an impact on the legal field akin to Supreme Court decisions in the United States but that they are unavailable because the decisions were issued under the name of the office's deputy head. She further attests to presenting internal reports that led to statutory reform but are not publicly available. The record, however, lacks evidence that TRAB is an influential body whose decisions impact trademark law in China rather than merely interpret existing law. There is certainly no evidence that TRAB enjoys the same type of influence as the U.S. Supreme Court which, as a constitutional court, can strike down laws as unconstitutional rather than simply interpret those laws.

The petitioner did submit two publications she claims to have authored with her coworkers and another publication for which she claims to have served as deputy editor. The publications are entirely in Chinese. The regulation at 8 C.F.R. § 103.2(b)(3) requires the submission of translations certified by the translator for all foreign language documents. While we do not require a translation of the publications in full, without a translation of the title page or other page crediting the petitioner, the petitioner cannot establish her role for these publications.

The fact that the petitioner happens to originate from China and, thus, speaks Chinese and is experienced with Chinese intellectual property law, is not evidence that she has made or will make an impact on the field of intellectual property law other than to benefit her specific clients. While benefiting individual clients has intrinsic merit, the impact is not national in scope. Moreover, experience with Chinese intellectual property law and the ability to speak Chinese are both amenable to enumeration on an application for alien employment certification. Thus, they are not grounds for a waiver of that requirement in the national interest.

Finally, we concur with the director that, in addition to our concern regarding the lack of letters from the petitioner's employers confirming her work experience and duties, the record also lacks letters from other trademark law practitioners independent of the petitioner confirming the petitioner's influence on their own practice. While the petitioner has asserted that the only independent expert she contacted declined to support the petition, that information is not favorable to the petitioner's claim to have influenced the field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.